IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9514 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SUBHASHBHAI DAHYABHAI PATEL

Versus

STATE OF GUJARAT

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Appearance:

MR TUSHAR MEHTA for Petitioner

Mr S K Patel, AGP for Respondent No. 1 to 3

MS PJ DAVAWALA for Respondent No. 4

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CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 12/10/2000

ORAL JUDGEMENT

The petitioner has preferred this petition under Article 226 read with Articles 14, 19, 21 and 22 of the

Constitution of India challenging the order of detention dated 06.7.2000 passed by the learned District Magistrate, Rajkot in exercise of powers conferred on him by section 3(2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 on various grounds.

2. Rule was issued in this matter and in response to the service of rule, Mr S K Patel, learned AGP appeared for respondents No.1,2, and 3. Ms. P J Davawala, learned Addl.Standing Counsel appeared for respondent no.4-Union of India. Ms. Davawala had submitted affidavit of the Under Secretary of the Union of India which is taken on record.

3. I have heard the learned Advocates for the parties and have perused the papers. Learned Advocate for the petitioner has argued that certain basic documents relied upon by the detaining authority for the purpose of passing the detention order have not been supplied to the petitioner and, therefore, the petitioner could not make effective representation against his detention. It is his contention that at page Nos. 103 to 107 and 149 onwards some documents have been considered by the detaining authority. It is his case that as per column no.3, reference has been made to certain ration cards and the detaining authority has considered those ration cards and the copies of the said ration cards so considered, have not been supplied to the petitioner and therefore, there is violation of principles of natural justice as the said documents were obtained and considered behind the back of the petitioner and the petitioner could not get reasonable opportunity to meet with the case. Learned AGP has submitted on the other hand that these these documents were not material and they were only referred as passing remarks and therefore, it was not necessary for the respondent to supply those documents and, therefore, non-supply thereof would not vitiate the order.

4. For the aforesaid purpose, learned AGP has relied upon the observations in the case of L M S Ummu Saleema v. B B Gujaral & Anr. (AIR 1981 SC 1191). Relevant portion is reproduced as under:

> "Every failure to furnish copy of a document to which reference is made in the grounds of detention under Sec.3 (1) of the Act is not an infringement of Article 22 (5) fatal to the order of detention. It is only failure to furnish copies of such documents as were relied upon by

the detaining authority, making it difficult for the detenu to make an effective representation that amounts to a violation of fundamental rights guaranteed by Article 22(5)."

4.1. Another decision relied upon by the learned AGP for this purpose can be gathered from the decision of the Division Bench of this court in the case of Vijay Champaklal Shah v. Add.Secretary, Govt.of India (1985) 2 GLR 974. Relevant observations are reproduced hereunder:

"The guarantee conferred on the detenu under Article 20(5) of the Constitution of India is pertaining to the grounds of detention and all the documents that go to influence the decision about detention one way or the other directly and not incidentally or peripherally. The judgment of the Supreme Court in the case of Hasmukh v. State of Gujarat (AIR 1981 SC 28) and the judgment of the Supreme Court reported in 1975 SC 245 makes the position crystal clear. Article 22(5) of the Constitution of India speaks of grounds and the term 'grounds' include basic facts to be communicated, but further particulars are to be supplied within reasonable time. A clear line of distinction is required to be drawn between the basic facts on one hand, which are essential factual constituents of the grounds and their further particulars or subsidiary details on the other. The Supreme Court has very categorically laid down in the case of Hasmukh (supra) that while the 'basic facts' being integral part of the 'grounds' must be communicated to the detenu, as soon as may be after the detention...further particulars of those grounds in compliance with the second constitutional imperative spelled out from Article 22(5) are required to be communicated to the detenu, as soon as may be practicable, with reasonable expedition. We, therefore, hold that such a marginal, peripheral, incidental document showing why the sponsoring authority was required to approach the Central Government is not a material document, the non-supply of which can go to vitiate the order of detention or its continuance."

On the other hand, learned Advocate for the petitioner has also relied upon a decision of the Division Bench of this court in case of Budhabhai v. District Magistrate 1989(1) GLR 326. Relevant observations are reproduced as

under:

"It is also clear that the bills are the primary material from which the entries will be posted to the stock register. While distributing the essential commodities that first document to be prepared would be a bill. Whether the bill books were blank or written or they were written falsely is altogether a different question. Had the copies of bill books, in whatever form they were, been supplied to the detenu, he would have certainly been able to make his representation. IN the facts and circumstances of the case, that bill book did form part of basic facts constituting the offence and the alleged prejudicial activities. Therefore, it has to be included in the term 'grounds' which occurs in Article 22(5) of the Constitution of India and also in section 8 of the Act.

Since the petitioner-detenu has not been supplied with the copies of the bill books, which have been referred to and relied upon in the grounds of detention, the mandate of Article 22(5) of the Constitution is not complied with. Thus the petitioner-detenu has been deprived of his right to make effective and adequate representation against his detention. Hence the continuous detention of the petitioner-detenu is illegal and void and hence his further detention is required to be quashed and set aside."

5. It is a fact that the State Government has two different systems for supply of essential commodities. One of them is known as "below poverty line" i.e. BPL. In this system, the persons covered are required to have a particular maximum income and if the income is more than the amount fixed, they will not be entitled to any facility under the BPL scheme. Another scheme is known as Public Distribution Scheme i.e. PDS. The persons who are not covered by the BPL scheme may be covered by PDS. The case of the respondent is that the persons named in the documents at page nos. 103 to 107 and 149 onwards were actually holding cards under the PD Scheme and, therefore, they were not be entitled to get benefits of Supply of Essential Commodities which were available only to the persons belonging to the BPL scheme. That despite the said position, the petitioner had supplied those essential articles to the persons named in the said documents who were not eligible for the said supply since they belonged to PDS and did not belong to BPL scheme,

admittedly for the purpose of such decision, the detaining authority had verified the cards of those consumers mentioned in the documents at the above mentioned page numbers. On verifying, he has satisfied himself that these persons were possessing cards under the Public Distribution Scheme. Therefore, it cannot be said that the reference to the cards under public distribution scheme was only a passing remark and, therefore, it was not necessary for the respondent to supply those cards or copy thereof to the petitioner. In my opinion, those cards were actually considered by the detaining authority for the purpose of satisfying himself on the point that the consumers mentioned in these documents were really holding cards under public distribution scheme and not the cards under BPL scheme. The petitioner was, therefore, entitled to have a look at those cards in order to satisfy himself as to whether or not those consumers were really holding cards under the public distribution scheme or whether they were holding cards under the BPL scheme. In that view of the matter, it cannot be said that these documents were not basic documents and, therefore, it also cannot be said that the respondents were not required to supply the documents to the petitioner. It, therefore, also cannot be said that the non-supply of these documents did not cause any prejudice to the defence of the petitioner. In that view of the matter, it is very clear that those documents were actually considered by the detaining authority for the above said purpose and, therefore, it has to be held that these documents are basic documents and were required to be supplied to the petitioner, the same have admittedly not been supplied and this has caused prejudice to the petitioner, inasmuch as the petitioner could not make effective representation against the detention for want of such documents. Learned AGP has also argued that the only requirement was as to whether those consumers were actually holding cards under the BPL scheme or not. That therefore, the ration cards under Public Distribution Scheme were not at all relevant for consideration for the purpose of subjective satisfaction of the detaining authority. It is not possible to agree with this argument. Even the petitioner was also required to get it verified and get satisfied as to whether those consumers were holding cards under the BPL scheme or Public Distribution Scheme. This could be done only if the copies of those cards are supplied to him. This has not been done. Therefore, it has to be held that the petitioner was deprived of his valuable right of making effective representation against the detention and consequently further detention of the detenu cannot be sustained.

6. In the result, this petition is allowed. The impugned order of detention dated 6.7.2000 passed by the District Magistrate, Rajkot is hereby quashed and set aside. The detenu is directed to be released forthwith, if not required in any other case.

Rule is made absolute accordingly. No order as to costs.

12.10.2000 [D P Buch, J.]
msp.